Transnationals

Quarterly Newsletter of the United Nations Centre on Transnational Corporations

Annual Meeting . . .

CORPORATE ENVIRONMENTAL AGENDA FOR 1992 BRAZIL CONFERENCE

Doing its share in preparations for next year's landmark Conference on Environment and Development in Brazil, the United Nations Commission on Transnational Corporations, meeting in New York in April, agreed on a number of areas in which global companies and other large enterprises should be mobilized to protect and enhance the environment. These suggestions will eventually be the basis for the discussion of international business issues in the Conference, as well as related policy-making.

Chairman of the Commission, Ambassador José María Borbón of Costa Rica (left); Peter Hansen, Executive Director, UNCTC (centre); Samuel K.B. Asante, Deputy Executive Director, UNCTC (right).

In a consensus resolution, the Commission asked UNCTC to prepare action-oriented recommendations to boost corporate involvement in environmental protection efforts. In drafting these, the Centre will work in close consultation with international business organizations, transnationals, non-governmental organizations involved in the UNCED process, environment and development experts, other international organizations and United Nations bodies.

On the proposed agenda are:

- the observance of international environmental standards and guidelines, both governmental and corporate;
- improved management and regulation of industrial processes, the application of corporate world-wide environment and development policies and the maintenance of consistently high environmental, health and safety standards;

(Continued on page 2)

International Illicit Payments Agreement Revived

On the initiative of the United States, the Commission decided to reconsider an agreement to curb corrupt practices in international business, specifically the bribery of foreign officials. It requested a report on the current status of United Nations efforts in this area.

Efforts to elaborate an international agreement on illicit payments began in the Commission in March 1976, at the behest of the United States. Congressional investigations on foreign payments in the early 1970s showed that bribery of foreign officials by transnational firms was a widespread problem and could only be effectively dealt with through an international instrument.

Many firms, the studies found, use bribes to win sales abroad. Such practices distort free markets, hurting consumers. They can also damage relations between home and host States and sour popular attitudes to foreign investment.

(Continued on page 3)

New Guidelines for Corporate Environmental Disclosure 2

VIEWPOINTS
Government-Business Relations Increasingly Determine National Competitiveness 4

ADVISORY
North Korea Invites Investors 6

NEW PUBLICATIONS
Disclosing Industrial Hazards 8

Environmental Agenda

(Continued from page 1)

- developing and providing access to environmentally sound technologies particularly for developing countries;
- environment and development accounting and reporting methods;
- minimizing the risks to human life, health, property and the environment, as well as the restoration of damage;
- consideration of principles such as the "polluter pays", preventive action at the source, and the precautionary approach to environment and development issues.

The Commission will meet in early 1992 to review the draft. Once finalized, it will be forwarded to the fourth session of the Preparatory Committee for the United Nations Conference, meeting in New York in March-April 1992.

Recommendations to be drafted in close consultation with business and other non-governmental organizations.

The initial draft of the resolution was put forward by developing countries, with support from the Nordic countries and other groups. The Commission also requested further work on the feasibility of establishing mechanisms for financial or in-kind contributions by transnationals to protect and enhance the environment. The Commission on Transnational Corporations consists of 48 Governments, including those of the largest home countries. ■

New Guidelines for Corporate Environmental Disclosure

To guide companies in disclosing the financial and operational implications of environmental protection measures, the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR), meeting in March, proposed that a number of items be covered in company reports:

- A description of the company's environmental policy and other relevant environmental protection measures.
- Whether and how much the policy was in response to government rulings and how fully governmental requirements are being met.
- The improvements that have been made in key areas since the introduction of the policy.
- Whether the company is involved in any material proceedings under environmental law.
- The effect of environmental protection measures on the balance sheet and on operations, as well as possible future impacts.

The new guidelines respond to a recent UNCTC survey which finds that, despite growing environmental commitment, companies still provide the public with very little environmental information. What information is given is largely descriptive, detailing companies' environmental policies or intentions.

For internal management, most enterprises have individually developed accounts for environmental expenses and investment. But, the survey finds, they are unsure how to report them in financial statements. In addition, there is no clear, agreed definition of what should be considered as "environmental expenditures". That it covers spending to limit emissions of all types is generally agreed. What is not is whether employee protection and safety; the development and use of more environmentally friendly products and raw materials; accident prevention and process safety; and costs associated with accidents should also be included.

Reporting Clean-up Costs

The clean-up bill for some 27,000 hazardous waste sites in the United States is estimated at $675 billion; globally, that liability is estimated at over $1 trillion. These contingent liabilities, largely unreported by firms, have a significant adverse impact on their net worth — a concern of securities regulators, insurance companies, banks and particularly shareholders who face shrinking dividends when undisclosed clean-up costs reduce expected earnings.

Other factors in fact discourage reporting. Earnings pressures, for instance. With investors concerned about returns per share, companies are hesitant to make expenditures that would reduce income. Secondly, though many countries offer tax breaks for environmental measures, these are granted only after any expenditure is made. There is thus no fiscal incentive to record environmental liabilities.

The new guidelines provide a basis for companies to begin reporting environmental protection costs, till more sophisticated financial methods are devised. ISAR is also working to develop ways for transnational companies to account for their environmental impact and to harmonize related corporate disclosure standards. ■

Illicit Payments

(Continued from page 1)

Though national laws against bribery exist in most countries, they are not always effective against illicit payments in international commercial transactions. An international agreement against bribery, advocates hold, would do much to create a stable, transparent environment for global business.

Requesting an international conference to formalize its adoption, in May 1979, an almost complete draft was transmitted to the Economic and Social Council, awaiting agreement on the Code of Conduct on Transnational Corporations. The conference has not yet been convened and the draft agreement has remained on the backburner.

Faced with no immediate prospect of achieving an international agreement, the United States continued efforts to address the problem. In 1987 the Foreign Corrupt Practices Act was enacted, making criminally punishable foreign bribery by US corporations. In essence, the Act was an extension of domestic anti-bribery laws. It was amended in 1988 to become the Trade and Competitiveness Act.

At the same time, the United States renewed its drive to promote cooperation by other countries on this issue, first within the OECD, and now in the United Nations. In the words of Senator Proxmire — one of the most active members of the United States Congress in the illicit payments debate — "I still believe that a United Nations agreement to end bribery as a business practice would be the optimum outcome."

Though effective remedies will need national action, an international agreement is basic to the success of anti-bribery efforts.

Since illicit payments are often used as a competitive tool by firms, countries fear that unilateral action in instituting laws against foreign bribery may put them at a serious disadvantage vis à vis competitors in attracting foreign investment. Though effective remedies will clearly need national action, an international agreement — defining "illicit payments", and establishing uniform reporting procedures and a framework for information exchange — is basic to the success of anti-bribery efforts.

Besides an international agreement, various methods have been proposed to deal with corrupt practices at the inter-state level. These include codes of conduct; model laws; procurement codes governing international purchases; certification; and voluntary business codes.

The draft United Nations agreement highlights information disclosure as one of the key elements in preventing bribery. Among outstanding issues in the draft are the legal effects of illicit payments on international commercial transactions under civil law and some jurisdictional questions. The draft is being reconsidered in the context of the ongoing consultations on the Code of Conduct on Transnational Corporations. ■

International Agreement on Illicit Payments

The international agreement on illicit payments was drafted as a legally binding document. If adopted in its present form, signatory home and host States would be obligated to:

- **make the giving or offering, soliciting or receiving of bribes by corporations or public officials a criminal offense.**
- **take all measures necessary to establish their jurisdiction over the above offense,**
  if committed on its territory,
  if it has effect in its territory,
  if committed by a public official of the State.
- **prosecute or extradite an offender found on its territory. In cases where there is no bilateral treaty, the Agreement becomes the legal basis for extradition.**
- **ensure, under penalty of law, that firms established on its territory keep accurate records of payments made to or received from an intermediary.**
- **assist each other as much as possible in criminal investigations and legal proceedings against offenders.**
- **take all practicable measures to prevent bribery in international business. And inform the United Nations and each other of steps taken in implementing the agreement.**

READEX FICHE

Government-Business Relations Increasingly Determine National Competitiveness

"The international economic environment of the coming decades — in fact the future of multilateralism — will be shaped not by government or international institutions, but by the interaction of Governments and global corporations", highlighted Sylvia Ostry, Expert Adviser to the Commission on Transnational Corporations. Professor Ostry is currently Chairman, Centre of International Studies, Toronto.

Sylvia Ostry

The Commission was discussing recent trends in world foreign direct investment and the activities of transnationals, while looking at the policy implications for growth and development.

Fundamental Shifts

Transnationals are spearheading profound changes in the international economy, embodying a third wave of "internationalization" and interdependence since the Second World War, said Professor Ostry. The dramatic expansion of trade linkages in the 1950s and 1960s was the first; the second, the financial integration ensuing from the petrodollar recycling of the 1970s and 1980s. The current wave, marked by expanding investment and technology flows rather than trade linkages, has been unleashed largely by the "Ronald Thatcher" revolution of global deregulation and privatization in the 1980s.

Over the last 10 years, global annual outflows of foreign direct investment have more than tripled, reaching close to $200 billion in 1989. Transnationals and their affiliates now account for over 50 per cent of internationally traded goods. They also generate most new technology and are central in transferring it abroad.

"Investment is being increasingly recognized as a major factor in economic growth and the international competitiveness of nations. This is not merely because of its importance as a source of capital, but because of its interlinkage with trade and technology", said Antoine Blanca, Director-General for International Economic Cooperation.

Equity now makes up almost 80 per cent of the flows.

"However, equity's larger share simply reflects a smaller pie", he explained. Due to the debt related drop-off in bank lending through the 1980s, total private capital flows to developing countries fell by $40 billion. While equity investment cannot replace bank lending, developing countries should at least receive an increasing share of rapidly expanding global flows. On the contrary, their share in global foreign direct investment flows declined from 25 per cent in 1980-84 to 19 per cent in 1985-89. The 42 least developed countries are being particularly bypassed, with serious implications for their growth and development.

"While in developing countries the 1980s was a decade of debt, the 1990s should be a decade of equity", said Mr. Hansen. Efforts must be made to step up investments to developing countries, particularly the least developed.

Growing protectionism in Europe, the United States and Japan might be among the main causes for declining investment flows to developing countries.

As never before, developing countries are opening their arms to foreign investors, undertaking dramatic liberalizations and macro-economic reform. "Ten years ago", remarked Peter Hansen, Executive Director, UNCTC, "bank loans accounted for 80 per cent of all private capital flows to developing countries; equity investment for 20 per cent. Today the ratios are reversed."

"None the less, there is no proven correlation between foreign direct investment, increased exports and improved international competitiveness", cautioned Professor Osvaldo Sunkel of the University of Chile, a leading academic and Expert Advisor to the Commission. Moreover, he stressed, there are essentially two types of equity investment. One is capital-form-

ing, where inflows lead to the creation of additional productive capacity or to the transfer of new technologies, as in South-East Asia.

Osvaldo Sunkel

The other is directed to acquiring already existing assets to consolidate market position, as in the cross-border mergers and acquisitions boom in Europe in preparation for the Common Market. Or, as in Latin America, where productive assets are trading hands to pay for debt in debt-equity swaps in "forced investments".

More generally, growing protectionism in Europe, the United States and Japan might be among the main causes for declining investment flows to developing countries, he suggested. If goods originating in developing countries cannot be sold in developed markets, transnationals have little incentive to locate production there.

Maybe developing country Governments could form coalitions with global companies to lobby market access with developed country Governments, he said. Both have the same interest in opening markets. And given their size, economic clout, and experience with lobbying, corporations could be invaluable partners in international negotiations.

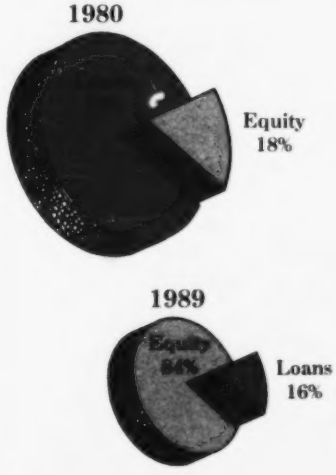
Changing Terms: Skills Factor Key

The economic implications of expanding global investment flows are not yet clear, particularly for developing countries. But, said Professor Ostry, what is obvious is the supreme importance of technology. All over, companies are globalizing their research and development activities. Technology flows have expanded dramatically, and are even more concentrated in developed countries than are foreign direct investment flows. Most notably, there has been an explosion of strategic alliances among transnational firms to share or develop new technologies.

Certainly the nature of global competition is altering fundamentally, she remarked. The fight for

Private Capital to Developing Countries

(Net annual flows)



global market share is increasingly a struggle for high technology. A country's competitive strength rests on the innovative capacity of its high-tech sector. And how innovative this sector is depends on a whole set of government-business relations aimed at promoting new technology and translating research and development into lucrative commercial technologies.

From the perspective of developing countries, technological competition and increasingly sophisti-

> *Developing country Governments could form coalitions with global companies to lobby market access.*

cated production technologies are transforming the way transnational companies organize their global division of labour. In choosing where to locate, companies are tending to look for skilled, modern workforces comfortable with high-tech processes and needing minimal training. Cheap labour costs alone are no longer sufficient incentive.

Besides, the changing global strategies of transnationals appear to be creating regional investment blocs, centred around the United States, the European Community and Japan. Firms from these countries are tending to locate investments in the immediate vicinity, building regional production and distribution networks aimed at the global market. In many cases, as with Spain and Portugal in Europe and Mexico in North America, investments go to upgrading infrastructure and skills. Not belonging to any of these blocs, lesser developed countries are likely to be further bypassed by trans-

(Continued on page 6)

National Competitiveness

(Continued from page 5)

nationals, warned Professor Sunkel.

In the 1990s human resource development will be a key competitive strategy for developing countries in attracting foreign investment, stressed both delegates and experts. But infrastructural and human development programmes are beyond the means of many developing countries. Multilateral institutions could provide financial and technical assistance to developing countries, they said. These institutions might also help attract investment by facilitating contacts between developing countries and transnationals.

System Friction

Transnationals' growing influence in global economics is placing stress on the present multilateral system, said Professor Ostry. For one, the present system was created to deal essentially with trade related product and financial flows, not investment and technology flows. Transnational firms' expanding involvement in the making of international economic policy, especially in the United States, Europe and Japan, is another factor. Finding multilateral processes too cumbersome, they are tending to pressure their Governments for more expeditious regional or bilateral arrangements.

With government-business relations increasingly defining a country's international competitiveness, tension will also ensue from basic differences between the Japanese, European and United States corporate systems, she said. As competition heats up, this "system friction" is likely to be quite severe, placing strains on the world economy and existing multilateral institutions. ■

North Korea Invites Investors

Like the Soviet Union and Eastern European countries, North Korea is actively seeking foreign investment to modernize industry, fill domestic resource gaps and build international competitiveness. In fact, joint venture laws in North Korea are more liberal than in most countries.

Enacted in 1986, the North Korean joint venture regulation allows foreign participation of up to 99 per cent. Dividends and capital may be fully remitted and all remittances are free of taxes and commissions. The income tax on joint ventures is pegged at 25 per cent. Disputes among the joint venture partners may be settled by a court of law or a North Korean trade arbitration organ. If both parties agree, the dispute may also be tendered to the trade arbitration organ of a third country. All "major actions" of the company are to be decided unanimously by the board of directors.

Priority Sectors

Foreign capital is particularly desired in the light industry, consumer goods sector. Since independence from Japan in 1945, industrialization has centred almost exclusively on heavy industry, resulting in serious consumer shortages. North Korea is also looking to develop its tourism and transportation sector. Already eight hotels are going up in Pyongyang with foreign collaboration. In addition, the Government is keen to explore non-equity forms of foreign investment and trade financing.

A number of agencies have been created exclusively to service international joint ventures and procedures have been speeded up. A joint venture bureau in the External Economic Affairs Ministry accelerates the formation of new enterprises. The State Supply Enterprise provides local raw materials. The State Transportation Company assists in export and import and the delivery of raw materials. The Joint Venture Bank, owned 50 per cent each by Chongryun and the Government, offers local financing. Customs clearance for imports and exports are being handled within a day; approvals within 30 days.

Already eight hotels are going up with foreign collaboration in the capital city of Pyongyang.

Joint ventures enter new markets abroad . . .

About 100 joint ventures have been approved so far, of which 30 are fully operational. Overwhelmingly, foreign partners are state enterprises from the Soviet Union and Eastern Europe or "Chongryun" — North Korean expatriates settled in Japan. The only known Western joint venture partner comes from Belgium and imports diamonds for cutting, polishing and re-export through the Soviet Union. Foreign participation in the form of management contracts for exports is prevalent in the textile sector, and are used primarily by German textile and trading companies.

Key Investment Opportunities

- chemicals
- construction
- electronics
- processed food
- footwear
- machinery and equipment
- manufactured goods
- minerals
- textiles
- tourism
- transport

Chongryun ventures produce high-quality goods, such as textiles and pianos, for export, mainly to Japan. In 1989, Chongryun textile exports to Japan amounted to $200 million; that is, two thirds of North Korean exports to that country. Chongryun ventures are said to be posing serious competition to South Korean textile firms in the Japanese market.

Soviet ventures concentrate in ship-building and in producing railway freight rolling stock for export to the USSR. A growing number are producing consumer goods, particularly clothing, for the Soviet market, using Soviet raw materials on a buy-back basis. Textiles now account for more than 25 per cent of North Korean exports to the Soviet Union.

South Korea is likely to become a significant investor, if political warming between the two Koreas continues. The Government is considering a fund of $400 million to subsidize South Korean firms doing business with the North. Corporations are also making initiatives, with Hyundai, for example, seeking to share in the development of a tourist resort at Mount Kumgang.

. . . but inadequate capital and technology transfer

Neither the present number, nor average size, is satisfactory to the Government, however. Ventures do not exceed $10 million in value. Very little transfer of high technology has occured: a common experience with countries relying exclusively on joint venture strategies.

Nevertheless, North Korea has abundant high grade raw materials, a broad industrial base, engineering capabilities, a highly skilled and disciplined labour force and competitive labour costs. Foreign investment, it is hoped, will help unleash the country's economic potential.

North Korea's $5 billion in foreign debt, almost three times its total export earnings, has kept investors away. Other obstacles have been inadequate legal, institutional and regulatory frameworks and limited experience in negotiating joint ventures and in promoting investment.

UNCTC Support

In a UNDP-funded technical assistance project, UNCTC is working with the North Korean Government to attract foreign investors, to set up the necessary legal and administrative framework, and to step up transfers of technology and management know-how. The Centre has led a number of investment promotion missions to Europe and is helping identify suitable joint venture partners. Earlier this year, UNCTC organized a seminar on joint ventures and the financial environment and, with UNIDO, a workshop on project evaluation and appraisal. ■

Joint ventures in textiles account for one quarter of North Korea's exports to the Soviet Union and two thirds of exports to Japan.

Disclosing Industrial Hazards

To enable effective accident prevention and emergency response, most industrialized nations require corporate disclosure of industrial risks and hazards. But, with few exceptions, they do not require equivalent disclosure for the overseas operations of their transnational companies. At the same time, corporate risk disclosure is not widely practised in developing countries. Where requirements exist, lack of resources and regulatory infrastructures make enforcement very difficult.

Key Disclosure Areas

- construction of new facilities
- operation of industrial facilities
- sale or export of hazardous products
- workplace management

A new UNCTC publication, *Transnational Corporations and Industrial Hazards Disclosure*, recommends disclosure legislation by developing countries in four key areas: the construction of major industrial facilities; the operation of facilities which endanger public health, safety and the environment; the sale or export of dangerous products; and safe workplace management.

Requirements should be patterned after those with which transnational companies already comply and should be uniform among countries. According to the study, common standards would simplify compliance. Firstly, firms could apply the same procedures worldwide. Secondly, extending one set of practices to countries with no rules would be less problematic.

In addition, precise and legally enforceable requirements tend to be more effective than informal guidelines. Taking the experience of industrialized countries, formal and explicit procedures, such as exist in the United States and the Netherlands, work better than the informal procedures of, say, the United Kingdom and Scandinavian countries.

Much of the information to be disclosed to host Governments is already provided to home countries.

Transnationals generally accept disclosure principles, finds the study, since they do not unduly threaten trade secrets or other corporate interests. Moreover, much of the information to be disclosed to host Governments is already provided to home countries.

The study presents model disclosure legislation, taking into account resource constraints and administrative limitations in developing countries. Though designed for transnationals, standards could be applied to local firms, national development projects and joint public undertakings. They might also be the basis for uniform international policies. ■

Transnational Corporations and Industrial Hazards Disclosure. United Nations publication. Available in September 1991.

Also available, *Transnational Corporations and Global Climate Change*. The study analyses corporate practices in the six industrial sectors that contribute most to global warming: fossil fuel production, road vehicles, electricity generation, energy-intensive metals production, chlorofluorocarbon production, and inorganic nitrogen fertilizer production. Exploring the differential impact of each in industrialized and developing countries, it proposes ways in which they could be restructured to limit global climate change and ozone depletion.

Copies may be obtained from the United Nations, Sales Section, New York or Geneva.

The United Nations Centre on Transnational Corporations is an autonomous body within the United Nations Secretariat. Under the guidance of the Commission on Transnational Corporations, an intergovernmental subsidiary organ of the United Nations Economic and Social Council, the Centre seeks to further understanding of the nature of transnational corporations; to secure effective international agreements; and to strengthen the negotiating capacity of host countries, in particular the developing countries.

Transnationals is published four times a year. The articles draw on the results of research and technical co-operation activities undertaken by the Centre. The findings do not necessarily reflect the views of the United Nations. Requests for inscription on the mailing list and other correspondence should be addressed to the Editor of ***Transnationals***, Room 1216, 2 United Nations Plaza, New York, NY 10017, USA. Fax 212-963-2146

Editor: Khalil Hamdani. Assistant Editors: Premila Nazareth and Christopher Smith.

Volume 3 • Number 2

United Nations Centre on Transnational Corporations
2 United Nations Plaza
New York, NY 10017, USA